Supreme Court, U.S.
FILED

951876 MAY 20 1996

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

MARSHALL A. LEVIN,

Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS and MARY ROBINSON, ADMINISTRATOR OF THE ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

MARSHALL A. LEVIN, Pro Se
4647 West Davis Street
Skokie, Illinois 60076
(847) 677-2123

Midwest Law Printing Co., Chicago 60610, (312) 321-0220

QUESTION PRESENTED

Whether, an attorney, who is the subject matter of a state disciplinary proceeding, can obtain federal jurisdiction over alleged acts of federal constitutional deprivations, by having asked the state supreme court to have reviewed such allegations in its supervisory capacity, and should such federal jurisdiction include a civil action for damages, and equitable relief, for said violations perpetrated by the state's disciplinary commission and its administrator?

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	2
FEDERAL STATUTES INVOLVED	2
STATE STATUTES INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	16
APPENDIX	*infra*

TABLE OF AUTHORITIES

Cases PAGE

D.C. Court of Appeals v. Feldman, 460 U.S. 487 (1983) 10, 11

Feiger v. Thomas, 74 F.3d 740 (6th Cir. 1996) ... 13

Landers Seed Co. v. Champaign National Bank, 15 F.3d 729 (7th Cir. 1994) 15

Leaf v. Supreme Court of State of Wis., 979 F.2d 589 (7th Cir. 1992) 11

Sexton v. Ark. Supreme Court Com. on Pro Conduct, 725 F.Supp. 1051 (1989) 14

United States Parole Comm'n v. Geraghty, 445 U.S. 388 (1980) 9

Other Authorities

42 U.S.C. § 1983 ..... 2, 5, 6, 12, 14

Ill. Sup. Ct. R. 383(a) 2, 6

Ill. Sup. Ct. R. 753 ..... 2, 3, 13

Ill. Sup. Ct. R. 764(b) 3

Ill. Sup. Ct. R. 773(d) 3

Yale Law Journal, Vol. 82 (1973); Constitutional Adjudication: The Who and When 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

MARSHALL A. LEVIN,

Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS and MARY ROBINSON, ADMINISTRATOR OF THE ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner, Marshall A. Levin, respectfully prays that a writ of certiorari issue to review the judgment order of the United States Court of Appeals for the Seventh Circuit entered on January 17, 1996 and to review the subsequent denial of the motion for reconsideration on February 20, 1996.

OPINIONS BELOW

The United States Court of Appeals for the Seventh Circuit modified the judgment of the district court and dismissed petitioner's complaint for lack of jurisdiction. A motion to reconsider was subsequently denied. The opinion below is reported at 74 F.3d 763 (7th Cir. 1996).

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on January 17, 1996, and reconsideration was denied on February 20, 1996. This Court's jurisdiction to consider this petition from the final judgment or decree by the United States Court of Appeals in which the decision could be had is invoked pursuant to 28 U.S.C. Section 1254.

FEDERAL STATUTE INVOLVED

Title 42, United States Code, Section 1983.

> Every person who, under color of any statute*, of any state subjects any citizen* to the deprivation of any rights* secured by the Constitution, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATE STATUTES INVOLVED

Illinois Supreme Court Rule 383(a) (1995):

> "(a) motion requesting the exercise of the Supreme Courts' supervisory authority shall be supported by explanatory suggestions and shall contain or have attached to it the lower court records or other pertinent material that will fully present the issues."

Illinois Supreme Court Rule 753,
Amended, effective August 1, 1985:

(a) Inquiry Boards* shall consist of members of the bar of Illinois.

(d) Review Board* nine member Review Board* not less than five members shall constitute a quorum, necessary to a decision.

(e) Review Procedure* the respondent may file exceptions with the court.

Illinois Supreme Court Rule 753,
Amended, effective November 1, 1990:

(a) Inquiry Boards* shall consist of members of the bar of Illinois and nonlawyer.

Illinois Supreme Court Rule 753,
Amended effective May 26, 1993:

* The Review Board shall function in panels of three, presided over by the most senior of the panel. The concurrence of two members of a panel shall be necessary to a decision. Amended eff. May 26, 1993.

Illinois Supreme Court Rule 764(b),
Amended, effective August 27, 1990:

* the disciplined attorney shall not maintain a presence or occupy an office where the practice of law is conducted.

Illinois Supreme Court Rule 773(d),
Amended, effective October 13, 1989:

* costs shall be paid by the respondent attorney.

STATEMENT OF THE CASE

A complaint was voted on by an inquiry board against an attorney. The inquiry board consisted of two lawyers and a nonlawyer. The acts complained of took place prior to 11/1/90. Before 11/1/90, the applicable rule only provided for lawyers voting on such a complaint. As a result of the inquiry board's vote; which board contained the nonlawyer; a twelve count complaint was issued to be heard by a hearing board. The hearing board, after conducting a hearing, found the lawyer guilty of the twelve

counts and recommended that the lawyer be disbarred. The lawyer filed exceptions to the report of the hearing board with a review board which concurred with the decision of the hearing board.

The review board consisted of three members. The rule in effect at the time of the alleged wrongdoing(s) provided for a review board of nine members rather than three members. Notwithstanding the prior rules, the hearing board report was confirmed by only a three man review board. The lawyer did not, up to this point, claim any constitutional deprivations.

On 9/27/94, the lawyer filed a motion for a supervisory order to the Illinois Supreme Court pursuant to Rule 383, which allowed for a request for the Court to exercise "supervisory authority". The motion pointed out to the Court many allegations of the use of unconstitutional rules and implementations by the disciplinary commission. The motion was denied on 10/28/94.

On 9/29/94, while the motion for supervisory relief was pending, the lawyer filed for leave of the state supreme court to file exceptions to the review board's report and recommendations. No allegations of unconstitutional activities were alleged.

The rule in effect at the time of the alleged wrongdoing(s) gave a lawyer the right to file exceptions with the state supreme court, to the report of a review board. The lawyer was not allowed to file his exceptions; according to a new rule which went into effect after the alleged wrongdoing(s). On 1/25/95 the state supreme court adopted the report of the review board and disbarred the lawyer. Reciprocally, the federal court also disbarred.

A Five Thousand and no/100 Dollars ($5,000.00) fine was charged against the lawyer by the disciplinary commission.

On 12/23/94 the lawyer filed a federal civil complaint alleging violations of the United States Constitution requesting relief pursuant to 42 U.S.C. Section 1983.

The federal complaint alleged that:

a. Counts I and II asserted that the disciplinary proceedings violated Levin's due process and equal protection rights by forcing him to abandon his federal bankruptcy practice.

b. Count III alleged that the Supreme Court of Illinois Rules (Numbers 753 and 764(b)) used to prosecute the lawyer were not even in existence at the time of the alleged wrongdoing(s).

c. Count IV claimed damages for the alleged unconstitutional deprivations.

d. Count V claimed that the imposition of a Five Thousand and no/100 Dollars ($5,000.00) fine against the lawyer was the imposition of a criminal fine on a person who was not given a full panoply of constitutional rights.

e. Count VI alleged that the punishment imposed on disciplined lawyers had no clear guidelines which deprived the lawyer of equal protection.

Thereafter, the disciplinary commission moved to dismiss the complaint for lack of jurisdiction and immunity. The district court dismissed for lack of jurisdiction on Counts I, II and III. Count V was dismissed on account of the matter being raised in a supervisory motion for relief. Count VI was denied for failure to raise the claim to the supreme court. Count IV was dismissed on the grounds of res judicata.

The United States Court of Appeals decided that the district court lacked jurisdiction on all six counts. The district court's judgment was modified to make the dismissal of the entire complaint based upon lack of jurisdiction.

REASONS FOR GRANTING THE WRIT

This case initially involves the words: supervisory and judicial. The petitioner, Marshall A. Levin (hereinafter referred to as "Levin") requested the Illinois Supreme Court to exercise its supervisory powers according to Rule 383 of the Illinois Supreme Court, Ill. Sup. Ct. R. 383(a) (1995). Levin claims that his federal complaint requests that federal courts grant relief due to respondents', (hereinafter known as "ARDC"),[1] unconstitutional activities.

The United States Court of Appeals for the Seventh Circuit (hereinafter known as "USCA-7") assumed at page 766 (74 F.3d 766) of its decision; that Levin was asking the federal courts "to review decisions of state courts in judicial proceedings". They assumed that Levin was asking for a review of the Illinois Supreme Court's disbar order of 1/25/95, Appendix 13.

Levin's federal civil complaint, based upon 42 U.S.C. Section 1983, was filed on 12/23/94; approximately one month before the 1/25/95 disbar order. Therefore, Levin's complaint could not have asked for review of the state court's judgment, which took place subsequently.

Levin complained, on 12/23/94, of injuries taking place "independent of any state court judgment" (page 766 of the USCA-7's decision). The injuries had to be independent of the 1/25/95 disbar order because it had not even taken place.

---

[1] Attorneys Registration and Disciplinary Commission of the Supreme Court of Illinois and Mary Robinson Administrator, of the Illinois Attorneys Registration and Disciplinary Commission of the Supreme Court of Illinois.

Since, on 12/23/94, Levin did not complain of the 1/25/95 disbar order and since the only state supreme court decision existing was the denial of the 9/29/94 supervisory order; the only state court order which Levin could have complained of, on 12/23/94,[2] was the 9/29/94 supervisory order. Said order was not a final order and therefore not appealable to the United States Supreme Court.

The order was the denial of a motion and had no language to make it a final order. The order is at page 15 of the Appendix.

Notwithstanding the dates and the clarity of Levin's progress down the "supervisory" road; the USCA-7 tries to divert Levin to the judiciary road issues by the use of self-executing diversionary dicta.

These are:

a) The relief requested would "effectively void the state court ruling" (page 766);

b) Since Levin complains of his disciplinary proceedings, and since they are judicial in nature, the said claims are "inextricably intertwined" with a state court decision;

c) That if arguments a and b, above, do not work; it is held that since the entry of the 1/25/95 disbar order; Levin's claims are moot because the rules complained of would not apply to him.

Granting relief to Levin would not "effectively void the state court ruling". Levin claims that the use of ex post facto and unconstitutional rules caused him injuries. If the federal courts did not want to upset the 1/25/95 disbar order, there is no reason why Levin could not seek dam-

[2] The date of the filing of the civil complaint.

ages or declaratory relief even though the disbar order stood. Levin, however, claims that the federal courts do have the power to declare the disbar order void. However, if an upset of the disbar order would cause the loss of federal jurisdiction, Levin would just have to be satisfied with damages or other relief.

Levin claims "injury independent of any state court judgment" (page 766 of the USCA-7 decision).

Levin has not "asked the district court to review the Illinois Supreme Court's judgment to disbar him".

Levin has asked the federal courts to review the rules and implementations; not the state court's judgment.

When Levin filed his complaint, no judgment to disbar had even been entered; so how can it be said that in his complaint, Levin asked review of the disbar order? It is obviously not true that Levin asked for review of the disbar order. Since the disbar order did not exist, there would be only certain other things that Levin could have requested.

At page 766 of the opinion being appealed, the United States Court of Appeals for the Seventh Circuit makes a distinction between:

a. "plaintiffs who claim their injuries are directly attributable to an erroneous state court decision"; and

b. "plaintiffs who claim injury independent of any state court judgment."

Did Levin appeal any erroneous state court judicial decision? No; he did not appeal the 1/25/95 state court decision to disbar. Therefore, Levin's complaint does not involve paragraph "a" above.

Did Levin claim injury(ies) independent of the state court judgment? Yes, he did.

a. Levin claims that the state court erred in performance of its supervisory duties when it denied his 9/29/94 motion to have the state supreme court exercise its supervisory powers.

The United States Court of Appeals at page 767 of its instant decision gives a "strained" admission of Levin's arguments. It is conceded, *arguendo*, that Levin's complaint posed only "general challenges to the Illinois Supreme Court Rules". However the Court of Appeals claims that the disbarment "mooted" such "general challenges". The Court of Appeals authority for mootness is the case of (at note 5) *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 396 (1980). *Geraghty* was a class action case involving whether the class representative always had standing throughout the litigation. Therefore, it is a case much different than our instant case.

At page 396 of *Geraghty* it is noted that mootness has two aspects:

a. "when the issues presented are no longer live"; or:

b. "the parties lack a cognizable interest in the outcome";

Both of these requirements concern whether:

"federal courts are presented with disputes that they are capable of resolving." (page 393)

Geraghty cites The Yale Law Journal, Vol. 82, 1363 (1973) concerning mootness. The Yale Law Journal article (Constitutional Adjudication: The Who and When): states that a review of "mootness cases serve to confirm the demise of the personal interest requirement," (Page 1485, The Yale Law Journal, Vol. 82 (1973)).

In *Geraghty* the plaintiff class representative was released from prison during the pendency of the case. Geraghty would not wish to go back to prison. Therefore Geraghty would not:

a. have anything at stake to continue the litigation;

b. carry on the litigation with vigor.

Levin, obviously, would like to go back to practicing law, and would vigorously prosecute his case; as opposed to Geraghty who wanted all litigation behind him.

According to Rule 10 of this Honorable United States Supreme Court; a writ of certiorari should be issued when a "United States Court of Appeals has decided an important question of federal law** in a way that conflicts with relevant decisions of this Court."

In his civil complaint; Levin claims the unconstitutionality of Illinois Supreme Court Rules:

753, amended 11/1/90;

764, amended 8/27/90;

773, amended 10/13/89.

Levin claimed that the rules deprived him of his law practice property without due process of law, and without equal protection. Further, that they imposed criminal punishment without a full panoply of constitutional rights. Further, Levin claimed that the activities for which he was accused allegedly took place before the complained of rules were even in existence. He claimed a clear violation of the ex post facto limitations of the constitution.

At page 487 of *D.C. Court of Appeals v. Feldman*, 460 U.S. 487 (1983), this Honorable United States Supreme Court noted that:

> "The remaining allegations in the complaints, however, involve a general attack on the constitutionality of Rule 461(b)(3)";
>
> *** "The District Court, therefore, has subject matter jurisdiction over these elements of the respondent's complaints."

Levin's entire complaint goes to general challenges of Illinois Supreme Court Rules.

In *Feldman*, at 460 U.S. 486, it was pointed out that in part of his complaint Feldman claimed that the D.C. Court was unreasonable and discriminatory. These allegations:

> "required the District Court to review a final judicial decision of the highest court of a jurisdiction in a particular case."

Levin makes no such allegations about a judicial decision of an Illinois judicial power. Levin claims no unreasonableness or discrimination.

Levin's complaint is certainly different than that of "Leaf." In *Leaf v. Supreme Court of State of Wis.*, 979 F.2d 589 (7th Cir. 1992), at page 598 it was shown that:

a. "Leaf is essentially attacking the investigative procedures"; and

b. "Leaf attacked the motive and the conduct of this disciplinary proceeding".

Levin makes no such allegations concerning any judicial proceeding.

The only thing Levin pointed out in his complaint were general challenges to state bar rules. These rules were made in non-judicial Supreme Court of Illinois rule making proceedings, not having anything to do with Levin. The unconstitutionality of the rules and their implemen-

tations were admitted for the purpose of the motion to dismiss the complaint. The federal courts should have simply looked at Levin's allegations and should have seen the obvious unconstitutionalities magnified by the *ex post facto* usage thereof.

All of the "buzz words"[3] used by the USCA-7 are not applicable to Levin's complaint because he complained of no judicial proceeding. Levin asked for a review of the state rules.

At page 767 (74 F.3d 763 (7th Cir. 1996)) of the instant decision the USCA-7 states that Levin claimed that the "disciplinary hearings proceeded on, and punished on, unconstitutional rules and usage". There is the conclusion that this amounts to the attack on the state court judgment. As previously stated, the state court judgment had never came about when the complaint was filed. Because the state court's agencies later used the unconstitutional rules and usages to punish Levin does not mean that the state could lift itself up by its unconstitutional bootstraps. and punish Levin by claiming he questioned their judicial decision(s). Only the rules were challenged in an independent proceeding.

The usage by the ARDC of unconstitutional rules in Levin's prosecution did not become cleansed by the judicial order which resulted from such usage. Such a result would all but cause 42 U.S.C. Section 1983 to become an empty statute. The State of Illinois never entered any final order disposing of the unconstitutional violations and therefore the federal court could review the rules.

---

[3] Inextricably intertwine, impermissibly attack, res judicata.

If it is held that a questioned unconstitutional rule is protected from being questioned because it was subsequently used to punish in a state judicial proceeding, then violations of civil rights will have become unmanageable by the federal courts.

Possibly the most unconstitutional of all the rules complained of by Levin, is Rule 753(c)(5); which requires a petition for leave, before the Supreme Court of Illinois would allow an attorney to appear and present his case.

A similar rule of the Supreme Court of Michigan allowed a lawyer only the right to apply for leave to appeal and was analyzed in *Feiger v. Thomas*, 74 F.3d 740 (6th Cir. 1996). The U.S.C.A., 6th Cir. was:

a. "confident that the Supreme Court of Michigan takes constitutional challenges to its regulations pertaining to lawyer conduct very seriously."

b. "especially" * "where" (the lawyer) "has not even attempted to" * "assert his rights"; or

c. "invoke the Court's superintending control".

The analysis of the *Feiger* case shows the strength of Levin's complaint. A reading of the state court's order shows that the Illinois Supreme Court summarily denied Levin's motion for supervisory relief. There certainly is nothing in the denial order to indicate that the Supreme Court of Illinois takes constitutional challenges "very seriously". Levin's constitutional challenges were disposed of with the shortest of language, as follows: "motion for supervisory relief is denied.".

It cannot be said that Levin did not attempt to assert his rights or to invoke the court's "superintending control".

The weakness of the rule, which only allows for an "opportunity;" rather than the actual right to have review

is shown by the cavalier manner in which Levin's motion for supervisory relief was denied.

When the USCA-7 states that:

a. "Levin would" (after the disbar order) "no longer have a personal stake in a general declaration" concerning Illinois bar rules; and that,

b. "Levin's complaint depends entirely on the allegations that his disciplinary proceedings injured him;" (763 F.3d at 767)

these are statements that talk of prospective relief. The "reversal of an unconstitutional action, which has already injured the plaintiff constitutes prospective relief under Section 1983", *Sexton v. Ark. Supreme Court Com. on Pro Conduct*, 725 F.Supp. 1051 (1989).

If a plaintiff complained of Section 1983 violations concerning the right to vote; would the passing of the election, moot the claim to vote? No. The Plaintiff would still want to vote and vigorously pursue the case. So long as the aggrieved party continues the loss caused by the unconstitutional act, the court's should do as much as possible to put the person back where he was before the unconstitutional rules caused their harm.

Would a case involving abortion become moot by the baby's demise?

Levin's request for relief is clearly within the purview of 42 U.S.C. § 1983. If there was a "deprivation of any rights" by those acting "under color of" an unconstitutional rule, Levin would be entitled to "an action at law" or "suit in equity".

Levin's "action at law" requests damages. This relief has nothing to do with an overturn of the Illinois 1/25/95 disbar order. In December, 1994, Levin told the district

court that the ARDC was "under color of law" using unlawful rules to cause him damages. This request for damages was pure and simple. It was not intertwined with any judicial decision because no final judicial decision had even been made.

Levin's complaint is also a "suit in equity". Besides damages, there are prayers for equitable relief that the state proceedings be declared void. What state proceedings had occurred in 1994, when the complaint was filed? The only decision that the Supreme Court of Illinois had made, was the denial of the motion for supervisory relief. There was a denial of a request for supervisory rather than judicial relief. The federal courts can definitely say to the state courts that their supervision of obvious constitutional deprivations was wrong. This power includes an award for damages and the power of equitable relief.

The instant decision to be reviewed cites *Landers Seed Co. v. Champaign National Bank*, 15 F.3d 729, 732 (7th Cir. 1994), for the proposition that if the requested relief "would effectively void the state court ruling"; federal relief should be denied. However, at page 732 of *Landers* it was held that:

> "a district court may preside over constitutional challenges to state court rules if such review does not require review of a final state court judgment in a particular case".

The federal court would not have to look at one page or word of state judicial proceedings to grant Levin's requested relief(s). Levin only asked the federal courts to look at the rules and their obvious unconstitutionalities. There would not have to be any review of any state judicial decision. There would have to be a review of the states refusal to supervise the obvious unconstitutional acts.

CONCLUSION

Petitioner, Levin, was the victim of unconstitutional state rules and other violations of the United States Constitution. Levin presented these complaints in only a supervisory venue.

If the federal court found such constitutional violations to exist, they could have granted the petitioner damages, at law, and relief, in equity. Since the petitioner only asked the federal courts to review the states supervisory deficiencies, there would be no review of a state judicial decision.

For the aforesaid, and all other reasons stated, Petitioner, Marshall A. Levin, prays that this Honorable Supreme Court of the United States of America grant a Writ of Certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

MARSHALL A. LEVIN, Pro Se
4647 West Davis Street
Skokie, Illinois 60076
(847) 677-2123